IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2091 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

RAMESH SHAMJIBHAI BHAYANI

Appearance:

1. Special Civil Application No. 2091 of 2003

MS ROOPAL R PATEL for Petitioner No. 1

MR ND SONGARA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/05/2003

ORAL JUDGEMENT

1. Heard learned advocate Ms.Roopal Patel appearing on behalf of the petitioner Corporation and learned advocate Mr.Sonagara on behalf of the respondent workman.

2. In the present petition, the petitioner Corporation has challenged the award passed by the Labour Court, Junagadh in Reference No.17 / 1998 dated 11th July, 2002, wherein the labour court has set aside the termination order and granted reinstatement with continuity of service without backwages of the interim period.

3. Learned advocate Ms.Roopal Patel for the petitioner Corporation has read over before this Court the finding given by the competent authority which is at page-8 of this petition. She submitted that the workman concerned has put in service of only six years. She also submitted that the past record which is at page.10 and contended that earlier also, the workman was dismissed from service for the misconduct of remaining absent. It is also contended that not only that but after the said misconduct of remaining absence, subsequently also the workman remained absent without prior permission. She also read over the leave report submitted by the workman which is at page-17 of this petition and also read the reply say explanation given by the workman and also read the finding given by the labour court. Therefore, her submission before this Court that though the past record was produced by the Corporation before the labour court, wherein in all 38 defaults committed by the workman and even then the labour court has not considered the past record while granting reinstatement in favour of the respondent workman. She also submitted that considering the facts and circumstances of the case, some more punishment is necessary as the workman remained absent without prior permission of the Corporation. Not only that but the workman once dismissed and subsequently, similar misconduct committed by him. She also submitted that mere denial of full backwages of the interim period cannot be considered to be sufficient punishment but some more punishment deserves to be imposed on the workman by this Court while exercising the powers under Article 226 and 227 of the Constitution of India.

4. However, it may be noted that when this Court has asked pertinent querry to the learned advocate Ms.Roopal Patel as to quantum of additional punishment that can be imposed by this Court on the workman concerned. While replying to this querry, learned advocate Ms.Roopal Patel has left this aspect to the discretion of this Court. Considering the facts and circumstances and the award in question, similar querry also put to the learned advocate Mr.Sonagara appearing for the respondent workman. In turn, learned advocate Mr.Sonagara has also left this

aspect to the discretion of this Court.

5. This Court has thoughtfully considered the submissions made by the respective learned advocates for the parties. Submissions made by the learned advocate Ms.Roopal Patel which are based on facts on record, for that, there is no dispute between the parties. No doubt, the workman remained absent from 13th March, 1997 to 17th March, 1997 and as such, no prior permission was obtained by the workman. There is no doubt that according to the workman, he had sent the report through U.P.C. to the Corporation and after resumption of the duties, he submitted leave report and resumption report. It has come on record that in the leave report the workman has stated that because of some work in his house and that is how, he would not be able to attend office duties for five days and accordingly prayed for five days leave from the Corporation.

6. I have perused the finding given by the labour court at page.27 and the labour court has come to the conclusion that for the misconduct to remain five days absent without prior permission, the punishment of dismissal is very much disproportionate, harsh and unjustified but the labour court has not considered the past record which was produced by the Corporation and there is no discussion to that effect in the award of the labour court. Therefore, considering the suggestions from the learned advocates of the respective parties, according to my opinion, for the misconduct to remain five days absent without prior permission, the punishment of dismissal is very much disproportionate, harsh and unjustified and for that, the labour court has not committed any error but the question is, while granting the relief of reinstatement, it is duty of the labour court while exercising the powers under Section 11-A of the I.D.Act, 1947, to see that in respect of proved misconduct, some punishment must have to be imposed against the respondent workman and on this count, the labour court has committed some error while not imposing any punishment on the respondent workman. It may be appreciated that mere denial of backwages of the interim period cannot be considered to be sufficient punishment. Therefore, considering the entire facts and circumstances of the case, when reinstatement is rightly awarded by the labour court but looking to the proved misconduct to remain absent without prior permission for five days and considering the past record of the workman respondent herein who is reported to have committed 38 defaults in past service career, for which, once the workman came to be dismissed for similar kind of misconduct and

subsequently also the workman has committed similar misconduct, according to my opinion, if punishment of stoppage of four increments with cumulative effect is imposed by this Court, will meet the ends of justice between the parties.

7. In view of above observations and discussions, this Court is of the view that without disturbing the award passed by the labour court concerned, some additional punishment should be imposed on the respondent workman. It is ordered that the award impugned in this petition is modified to the extent that reinstatement granted by the labour court concerned with continuity of service is not disturbed by this Court but over and above, the respondent workman shall suffer punishment of stoppage of four increments with cumulative effect and the award in question stands modified accordingly.

8. At this stage, learned advcoate Mr.Sonagara for respondent workman submits that some suitable directions may be issued on the petitioner to implement the award in question so that the workman can be reinstated in service within some reasonable time. In turn, learned advocate Ms.Roopal Patel submits that some reasonable time of four weeks may be stipulated so that the petitioner Corporation can implement the award in question as modified by this Court.

9. In view of above, it is directed to the petitioner Corporation to implement the award in question passed by the labour court concerned as modified by this Court above within four weeks from the date of receipt of copy of this order.

Rule is made absolute to the extent indicated hereinabove with no order as to costs.

Direct Service permitted to the respondent.

Date : 7-5-2003 [H.K.Rathod, J.]

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